name is signed to the writing hereto annexed, bearing date on the 2d day of December, 1891," acknowledged the same before him in his county. This was a sufficient execution of the deed by the corporation, an the certificate of acknowledgment is in due form.

PEOPLES BUILDING, LOAN & SAVINGS ASSOCIATION v. TINSLEY — Decided at Staunton, September 15, 1898.—*Buchanan*, J.

1. BUILDING ASSOCIATIONS—*Contracts—Where payable—By-laws.* A member of a building association must be considered as having contracted with reference to the by-laws of the association. If these require that all remittances for loans premiums, dues, etc., shall be made to an officer at its office in another State, a bond given by one of its members for a loan made to him will be deemed to be payable at its said office, although nothing appears on the face of said bond or the deed of trust securing it to show where it is payable, and the borrower is a resident of and received the money in this State, and secured the same by a deed of trust on real estate located here.

2. USURY—*Conflict of laws—Place of payment governs.* If a contract made in this State, but to be performed in another State, is valid according to the laws of the latter State, it will be enforced here, although if to be performed here it would be usurious according to the laws of this State.

3. BUILDING ASSOCIATIONS—*Loans—Amount of credit for stock—Case in judgment.* The amount of credit to which a borrowing member of a building association is entitled on account of his stock which he has pledged as collateral is to be determined by the terms of his contract as construed and determined by the laws of the State where the contract is to be performed. In the case in judgment, the contract is a New York contract, and, according to the laws of that State, the borrower is only entitled to be credited with a sum equal to the value, or the amount standing to the credit, of his certificates on the books of the association, and that value is ascertained by adding together all monthly instalments paid in, and the dividends declared thereon, and deducting therefrom the losses ascertained by the shareholders to have been sustained by the association.

ALLEGHANY IRON CO. v. TEAFORD AND ANOTHER. — Decided at Staunton, September 22, 1898.—*Riely*, J.

1. EVIDENCE—*Breach of contract to accept goods—Delay in acceptance.* In an action to recover damages for the breach of a contract to accept and pay for iron ore at the contract price, evidence is admissible to show that the plaintiff has suffered loss from unreasonable and unnecessary delay on the part of the defendant in accepting ore which the plaintiff was ready and willing and offering to deliver.

2. EVIDENCE—*Breach of contract to accept iron ore—Silence of contract as to quality of ore—How quality determined.* In an action to recover damages for the breach of a contract to accept and pay for ore at a given price, where the contract fails to provide a method of determining whether the ore is of such quality as the defendant should have accepted, evidence is admissible to show that it was of such quality. In no other way could the jury determine whether the contract had been broken or not. In the case at bar the contract provided that the quality of the

ore should be determined by certain named agents of the buyer and seller, but failed to provide for the contingency of their disagreement, and hence evidence of the quality of the ore was admissible before the jury.

3. INSTRUCTIONS—*Refusal when point covered by other instructions given.* It is not error to refuse to give an instruction when substantially the same ground is covered by another instruction which is given.

4. DAMAGES—*Breach of contract—Delay—Absence of fraud.* Actual fraud is not an essential ingredient of the breach of a contract. If there has been unnecessary and unreasonable delay in the performance of a contract resulting in damages to the plaintiff, he may recover such damages though the defendant be guilty of no deception or fraud.

5. DAMAGES—*Breach of contract—Delay in permitting performance—Profits.* A plaintiff may recover damages sustained by him for loss resulting from unreasonable delay on the part of the defendant in permitting him to perform his contract, and when he has been prevented by the defendant from completely performing his contract, he may also recover the profit he would have realized if he had been permitted to perform it fully. This is not a double recovery. The object of the law in awarding damages is to make amends or reparation by putting the party injured in the same position, as far as money can do it, as he would have been in if the contract had been performed.

6. BREACH OF CONTRACT TO ACCEPT AND PAY FOR CRUDE ORE—*Measure of damages.* Upon the breach of a contract to accept and pay an agreed price for crude ore, the measure of the plaintiff's recovery is the difference between the cost of the ore to the plaintiff at the stipulated place of delivery and the price the defendant agreed to pay for it. It is immaterial at what price the plaintiff may have sold the ore to other parties.

7. ARGUMENT OF COUNSEL AGAINST OPINION OF THE COURT. When the trial court has refused to give an instruction embodying a particular view of the case, it is not error to refuse to permit counsel to argue the same view before the jury.

8. APPEAL AND ERROR.—*Verdicts—Evidence to support.* This court will not set aside the verdict of a jury and the judgment of the trial court thereon as contrary to the evidence, where it appears that there was evidence before the jury upon which to base the verdict.

NORFOLK & WESTERN RAILWAY CO. v. GRAHAM.—Decided at Richmond, November 7, 1898.—*Keith*, P. Absent, *Riely* and *Cardwell*, JJ:

1. MASTER AND SERVANT—*Injury to servant—Obvious dangers—Fellow-servants.* A master is not liable for an injury inflicted on an experienced servant in the possession of all of his faculties, where it appears that the immediate cause of the injury was his exposure of himself to an open and obvious danger and the failure of a fellow-servant to give him timely warning, and that the duties which he was performing were too simple to require the publication of rules to govern them, and his fellow-servants were entirely competent to discharge the duties assigned to them.

2. RAILROADS—*Rules.* It is the duty of a railroad company to prescribe proper rules for the conduct of its affairs, but it is impossible to formulate rules to